DONALD R. ADAMS

IBLA 83-948 Decided October 31, 1984

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease application ES 32119.

Affirmed.

1. Oil and Gas Leases: Applications: Filings

> An application for an oil and gas lease filed in the automated simultaneous system may be withdrawn and another application submitted so long as the first application is withdrawn in writing prior to the close of the filing period. Where this is not done, but another application is nevertheless submitted, both applications must be rejected as prohibited multiple filings, regardless of whether or not an applicant intended to file conflicting applications.

APPEARANCES: Donald R. Adams, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Donald R. Adams has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 26, 1983, rejecting his oil and gas lease application ES 32119. Appellant's application had been drawn with first priority for parcel ES-107 in the November 1982 automated simultaneous oil and gas lease drawing conducted by the Wyoming State Office. The Eastern States Office had originally notified Adams that he was the successful applicant but, upon being informed by the Wyoming State office that Adams had apparently filed two separate applications for the same parcel, ultimately rejected his offer for violation of the prohibition against multiple filings. See 43 CFR 3112.2-1(f). Adams timely filed a notice of appeal.

In his statement of reasons for appeal, Adams does not dispute that he made two filings on the same parcel, but argues that his second filing was done to correct an error in the first filing and that he had contacted the Wyoming State office which had assured him that the matter would be taken care of.

As appellant explains the matter, he filled out his original application on November 11, 1982. 1/ Appellant filed only for parcel ES-107. In completing the field relating to the amount of filing fees, however, appellant states that rather than merely filling in the figure "75" as he should have (since the amounts are to be given only in whole dollars) he filled in "75.00." Considering this the next day, he realized that he had made an error. Believing, as the regulations indicated, that BLM would make no corrections, appellant on November 15, 1982, submitted a second application for the same parcel.

Appellant states that the day after he made his second application he contacted the Wyoming State Office by phone and talked to an employee of that office. He asserts that he explained his problem to her, informed her that he was sending a corrected application, and was told by her that the Wyoming State Office would take care of it. Appellant states that the procedure which he followed was the only way he could think of that would allow him to participate in the drawing, and notes that he had no intention of having two applications in the same drawing.

[1] Initially, we note, as we have had occasion to many times in the past, that reliance on the unauthorized advice of a Government official cannot serve to grant any rights unauthorized by law. Thus, the mere fact that appellant may have relied on erroneous advice is irrelevant if, in fact, his actions resulted in violation of the regulations.

We are not unmindful of the unusual situation presented by this appeal. Thus, while appellant was correct in his view that he had erred in filling out his original application form, he erroneously assumed that the error which he made would have resulted in the rejection of his application. This is not the case. As we noted in Shaw Resources, Inc., 79 IBLA 153, 179 n.12, 91 I.D. 122, 136 n.12 (1984), BLM does, in fact, correct errors in the filing fee field to make sure that the amount entered corresponds with the remittance submitted. Thus, in reality, appellant's application would not have been rejected for the identified error.

1/ Actually, the first application was dated "10-10-82," indicating that the application had been signed the previous month. It is likely that the first "10" was merely a clerical error and that appellant had meant to enter "11." Paradoxically under the regulations as then enforced, this error would have required rejection of the application as it would have been dated outside of the filing period in violation of 43 CFR 3112.2-1(c). Thus, we have an unusual situation in which the error of which appellant was aware was not fatal (for reasons set forth in the text), but another error was present which would have necessitated rejection of the application had it been drawn with priority.

In any event, subsequent to the events which occurred in the instant case, the Court of Appeals for the Tenth Circuit has held that the Department may not enforce its requirement that an application be properly dated unless it can be shown that some other substantive regulation was violated as well. See Conway v. Watt, 717 F.2d 512 (1983); but see Gendelman v. Watt, Civ. No. 82-3693 (D.D.C. Aug. 28, 1984), wherein the District Court for the District of Columbia refused to follow the Conway rationale. See also Ortman v. Clark, Civ. No. 84-0018 (D.D.C. Sept. 12, 1984).

If, on the other hand, we assume that appellant had made an error on the original application which would result in the rejection of his application and was still desirous of participating in the drawing, his proper course of action would be to file a written withdrawal of his application and, thus, any subsequent application would not have resulted in a multiple filing. 2/ Appellant, however, does not allege that he ever submitted a written withdrawal.

It is this element which distinguishes the instant case from our recent decision in John H. Trigg, 74 IBLA 246 (1983). In that case, an applicant had made an error in completion of his social security number and likewise submitted a second application. Both applications were placed in the drawing, a number of which were drawn with priority. Upon discovery of the apparent multiple filing, Trigg's priority was rescinded and his applications rejected. In reversing the decision of the Wyoming State Office, we placed particular emphasis in the fact that Trigg had filed a written withdrawal of his first application during the filing period. 3/ We therefore instructed the State Office to grant Trigg the priorities which he had earned from his second application.

The reason why a withdrawal must be in writing is obvious. Only an applicant, or a duly authorized agent, is vested with authority to withdraw an application. Telephone conversations are simply incapable of establishing the authority of an individual to act on behalf of an applicant. Requiring a withdrawal to be in writing protects both BLM and those who deal with BLM from unscrupulous parties and inadvertent mistakes. 4/ Therefore, appellant's telephone communication could not have served to effect a withdrawal of his first application.

Moreover, it is clear that appellant could not have filed his second application in reliance on advice of the Wyoming State Office since, as he,

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2/ The desirability of this course of action, however, may well be dependent upon the number of parcels applied for in any drawing. As we noted in Shaw Resources, Inc., supra, where an application is withdrawn all filing fees are retained. Thus, if the error in the first filing would merely serve to render an application "unacceptable" and, thus, involve a loss of only $75 for a processing fee, the filing of a withdrawal might result in the loss of considerably more funds. Applicants should keep this consideration clearly in mind when they are faced with such a problem. In the instant case, however, since appellant had filed for only a single parcel there would have been no difference in economic consequences between withdrawing the application or awaiting a determination that it was unacceptable.
3/ It is, of course, essential that any withdrawal be filed during the filing period in such circumstances. It is the status of an individual's application at the close of this period which is determinative of whether a multiple filing exists. Thus, a withdrawal of one application subsequent to the close of the filing period would not be effective to avoid a finding that a violation of the multiple filing prohibition had occurred.
4/ Congress, itself, has recognized the importance that relinquishments be in writing and, in the case of oil and gas leases, has so provided by statute. See 30 U.S.C. § 187b (1982).

himself, states, he filed the second application prior to inquiring of the State Office. In any event, the nature of the problem involved made it highly likely that either appellant, the employee to whom he talked, or both, misinterpreted the thrust of the conversation in critical ways.

Thus, if appellant had delineated the specific error with which he was concerned, but not made it clear that he had filed a second application, the State Office employee would have recognized that there was no real problem as the State Office would correct this error and, thus, the State Office would "take care of it" for appellant. If, on the other hand, the employee understood that appellant had already filed a second application she might well have believed, depending upon the exact phraseology used, that appellant, who clearly intended to withdraw the first application had, in fact, so stated in his second transmittal. Had this been the case there would similarly have been no problem. Thus, it is clearly possible that we are faced with a situation in which there was no misstatement of fact but merely a mutual misunderstanding. While we view this possibility as regrettable we think it also highlights the danger of conducting business with BLM over the phone since much of what BLM deals with is technical and a minor misinterpretation on either side can have major consequences.

We are left, then, with a situation wherein appellant, albeit unintentionally, has submitted two applications for the same parcel. While we can credit appellant's assurance that he had no intention of submitting a multiple filing, we cannot, because the error was unintentional, excuse it. The entire thrust of nearly all the informational requirements on the application form is to disclose individuals or organizations which attempt to subvert the fairness of the simultaneous system by submitting more than one application for the same parcel. Indeed, nothing more undermines the system than multiple filings as it deprives every citizen of the entitlement to an equal chance to win. We must, therefore, insist on rigorous enforcement of the prohibition against such activities. Thus, regardless of whether the multiple filing was occasioned by ignorance, inadvertence or intent, all applications so involved must be rejected. 5/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

5/ It is, therefore, irrelevant which of appellant's applications were drawn with priority, though the evidence would support the conclusion that it was the second application.